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Parent and Child - Custody of Child - Voluntary Relinquishment - Placement Agreements

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which have required at least a showing of past discrimination before approving numerical preferences. Because it ignored standing from an individual's viewpoint, the decision appears to be outside the mainstream of recent civil rights cases which have afforded white plaintiffs access to the courts in order to vindicate their civil rights.[76] A decision at odds with this authority should be based on strong precedent or cogent reasoning. The *Mele* decision is susceptible of this meaning and deficient in both respects.*

Joseph P. Caracappa

PARENT AND CHILD—CUSTODY OF CHILD—VOLUNTARY RELINQUISHMENT—PLACEMENT AGREEMENTS—The Supreme Court of Pennsylvania has held that child placement agreements voluntarily executed by parents and the county child welfare agency which condition the child's return on the agency's approval are authorized by state statutes and the regulations of the Department of Public Welfare and do not violate the due process clause of the fourteenth amendment to the United States Constitution.

Lee v. Child Care Service Delaware County Institution District, 337 A.2d 586 (Pa. 1975).

On August 28, 1972, Rita and Edwin Lee executed a placement agreement which transferred custody of their son to the Child Care Service of the Delaware County Institution District.[1] By the terms of the agreement, Child Care would arrange for placement, medical care and appropriate visitation. The child would be returned under conditions approved by Child Care. In case of dispute between the parties, the Juvenile Court of Delaware County would be available to review the matter and issue necessary orders.[2] Approximately

76. *See* notes 40 & 55 *supra*.

* The *Mele* decision was appealed on June 3, 1975, and the case is pending before the Third Circuit Court of Appeals.

1. Hereinafter referred to as Child Care.

2. The agreement form provided spaces for the date, the names of the family members involved and the reason for the transfer, which was subject to the following conditions:

> I, WE agree that said child/children may be removed from [our home] and hereby grant and give custody of said child/children to said Child Care Service.

eight months later, the Lees requested the return of their son. When their request was denied, the Lees brought an action in an individual capacity and as representatives of the class of all residents of Delaware County who had or would transfer custody of their children to Child Care by means of the placement agreements.[3]

The asserted grounds for the action were that the agreements were made under material mistakes of fact, were without consideration, were not authorized by state statute and that their use violated the due process clause of the fourteenth amendment.[4] The Lees requested compensatory and punitive damages in addition to preliminary and permanent injunctions prohibiting further use of the agreements without court approval. The defendants' preliminary objections to the class action were sustained and the cause dismissed.[5]

On appeal,[6] the Lees contended that the regulations of the Department of Public Welfare which authorized the use of placement agreements contravened the statutes under which they were promulgated and alternatively, assuming statutory authorization for

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I, WE agree to work with Child Care Service until plans for said child/children are completed in order that the interests of said child/children shall be adequately protected. I, WE further, agree that conditions for the return of the child/children shall be subject to the approval of CHILD CARE SERVICE.

The agreement form is reproduced in full in Lee v. Child Care Serv. Del. County Inst. Dist., 337 A.2d 586, 588 n.2 (Pa. 1975).

3. Lee v. Child Care Serv., 61 Del. 169 (C.P. Pa. 1974). As individuals, the Lees claimed they had been fraudulently induced to sign the agreement and sought compensatory and punitive damages from the caseworker, the director of Child Care, the director's administrative assistant, and two unnamed unknown agents of the service. For intentional infliction of emotional distress and loss of consortium, the Lees sought additional compensatory and punitive damages. All defendants filed preliminary objections. The chancellor upheld the cause of action in tort against the caseworker, but deemed insufficient the allegations of necessary intent on the part of the other named defendants. Leave was granted to amend the complaint. *Id.* at 170-71, 174. As of this writing, the individual action was still pending in the lower court.

4. *Id.* at 170-71. The allegations of mistake of fact and lack of consideration were not raised on appeal from the dismissal of the class action because of their primary relevance to the individual claims, which are still pending.

5. *Id.* at 182.

6. Lee v. Child Care Serv. Del. County Inst. Dist., 337 A.2d 586 (Pa. 1975). The Appellate Court Jurisdiction Act § 202(4), PA. STAT. ANN. tit. 17, § 211.202(4) (Supp. 1975), allows direct appeal to the supreme court of final orders in equity cases. Although their individual claim was unaffected, dismissal of the class action was a final order to the Lees as class representatives and was, therefore, appealable. *See* DeAngeli v. Fitzgerald, 433 Pa. 529, 252 A.2d 706 (1969) (dismissal of wife's consortium action an appealable final order despite the survival of husband's action in tort for injuries resulting from an auto accident).

the agreements, that their use violated the parents' right of due process.[7] Both points were decided against the appellants.

The court adopted the chancellor's view that the County Institution District Law[8] required the Department of Public Welfare to provide services for children at the request of the parents, with their consent, or by court referral. The enabling statute[9] authorized the Department to make rules and regulations which were necessary and proper to carry out those duties. In the court's view, the Department was acting within the authority granted by the statutes when it promulgated regulations 3220 C and 3231 D, which authorized the use of placement agreements. These regulations provided that, absent a court order, children could not be removed from their homes without written parental consent.[10]

Appellants relied on the United States Supreme Court decisions in *Stanley v. Illinois*[11] and *Armstrong v. Manzo*[12] for the proposition

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7. The Lees also asserted that the Adoption Act, PA. STAT. ANN. tit. 1, §§ 301-03, 311-13 (Supp. 1975) and the Juvenile Act, PA. STAT. ANN. tit. 11, §§ 50-101 to -337 (Supp. 1975), which require court hearings before children may be removed from their parents, should be considered in pari materia to the County Institution District Law, text of which appears at note 8 *infra*. The supreme court observed that those statutes were irrelevant because they dealt exclusively with permanent transfers of custody rather than the "non-final, consensual transfer of custody achieved by the execution of a 'placement agreement' " of the type used by Child Care. 337 A.2d at 589. The Lees further suggested that the agreements were void as against public policy found in Pennsylvania case law. The court rejected this argument by pointing out the majority of Pennsylvania decisions held only that such contracts were subject to judicial scrutiny and did not serve as final dispositions of the custody of the children involved. If the interests of the child would be best served by an arrangement other than that provided in the contract, the court might, at its discretion, declare the agreement void. *Id.* at 590 and cases cited therein.

8. The County Institution District Law provides:

> The local authorities of any institution district shall have the power, and for the purpose of protecting and promoting the welfare of children and youth, it shall be their duty to provide those child welfare services designed to keep children in their own home, prevent neglect, abuse and exploitation, help overcome problems that result in dependency, neglect or delinquency, to provide in foster family homes or child caring institutions adequate substitute care for any child in need of such care and, upon the request of the court, to provide such service and care for children and youth who have been adjudicated dependent, neglected or delinquent.

PA. STAT. ANN. tit. 62, § 2305 (1968).

9. *Id.* § 703.

10. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, MANUAL FOR SERVICES TO CHILDREN AND YOUTH, TITLE 3200, REGULATIONS PUBLIC CHILD WELFARE AGENCIES regs. 3220 C, 3231 D (1969) [hereinafter cited as DPW C & Y Reg. 3220 C and DPW C & Y reg. 3231 D]. The text of DPW C & Y reg. 3220 C appears at note 45 *infra*. See note 33 *infra* for text of DPW C & Y reg. 3231 D.

11. 405 U.S. 645 (1972) (due process required an unwed natural father be given a hearing

that parents have a constitutionally protected interest in their children which may not be abrogated without due process of law. The court agreed that the parental interest existed, but did not find that the use of placement agreements in any way violated that right.[13] *Stanley* and *Armstrong* were distinguished on the ground that they involved permanent termination of parental rights without consent, whereas the agreement questioned by appellants effected a consensual non-final transfer.[14] The court noted the clear language of the agreement advising parents that the conditions for the return of their children were subject to the approval of Child Care. Moreover, the court observed appellants had not utilized the juvenile court proceeding prescribed by the agreement as the means for handling disputes. Since appellants had failed to show that the regulations were inconsistent with the statutes or that the procedures used by Child Care had violated their right of due process, the supreme court affirmed the chancellor's dismissal of the class action.

In a dissent[15] joined by Justice Manderino, Justice Nix suggested the majority had merged the concepts of foster care and custody, despite the fact that the regulations clearly distinguished the two types of transfers and established different methods for accomplishing them. Transfers for purposes of "foster care" could be made with parental consent, but where a transfer of "custody" was contemplated a petition to juvenile court was required.[16] In the opinion of the dissenters, the agreement used in this case went beyond the authority granted by the regulations unless it was read to provide that Child Care could give the child foster care only so long as the agreement remained consensual.[17] The dissent further suggested that the majority opinion ignored public policy, which dictated against forcing parents to initiate proceedings to prove their fitness as guardians of their children. As a result of the decision, parents in need of assistance might hesitate to seek help from the Depart-

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to prove his fitness as a parent before his children could be taken in a dependency proceeding).

12. 380 U.S. 545 (1965) (adoption decree obtained by the mother and her second husband held invalid where natural father had been given no notice of the proceeding).

13. 337 A.2d at 590.

14. *Id.*

15. *Id.* at 591.

16. *Id.*; DPW C & Y reg. 3231 D. *See* note 33 *infra*.

17. 337 A.2d at 591 (Nix, J., dissenting).

ment of Public Welfare out of fear of a permanent loss of their children.[18]

The appellants had attacked the agreement by challenging the regulations which authorized it, charging the regulations contravened the statutes since the regulations permitted transfers of custody by voluntary agreement when the statutes allowed such transfers only by court order. In response, the court determined that the statute permitted voluntary transfers of "custody," but did not define "custody" or distinguish it from "foster care." The majority's conclusion on the issue whether the regulations contravened the statute appears to be correct. That result, however, does not minimize the importance of the dissent. The dissent addressed a different issue: whether the agreements themselves were valid, in light of their practical effect.

The validity of the agreement in application must be examined against the background of prior case law. It is well established in Pennsylvania that parents have a natural and prima facie right to the custody of their children.[19] This right arises from the legal obligation of parents to support and educate their children.[20] There is a strong but rebuttable presumption that the interests of children are best served when they are in the custody of their natural parents.[21]

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18. *Id.*

19. *E.g.*, Commonwealth v. Wormser, 260 Pa. 44, 103 A. 500 (1918) (just as parents had natural right to control of children, state as *parens patriae* had authority to regulate minors' working hours to protect their health and safety); Commonwealth *ex rel.* Parker v. Blatt, 165 Pa. 213, 30 A. 674 (1895) (parents' legal right to custody of their children should not be altered hastily, as the likelihood of damage to the relationship is too great); Commonwealth *ex rel.* Kennan v. Thomas, 151 Pa. Super. 131, 30 A.2d 246 (1943) (the prima facie right to custody of children is not overcome by fact that parents are temporarily unable to care for the child).

20. *See, e.g.*, Commonwealth *ex rel.* McDonald v. Smith, 170 Pa. Super. 254, 85 A.2d 686 (1952) (maternal grandparents not entitled to custody or visiting privileges where natural father demanded custody, despite grandparents' strong feelings for the child); Commonwealth *ex rel.* McTighe v. Lindsey, 156 Pa. Super. 560, 40 A.2d 881 (1945) (foster parents could not overcome father's prima facie right to custody of eight-year-old child even though she had been in foster home since she was seven months old).

21. Commonwealth *ex rel.* Bendrick v. White, 403 Pa. 55, 169 A.2d 69 (1961) (child's best interests dictated award of custody to foster parents where father traveled frequently and planned to leave the child in care of others while he was away); Cochran Appeal, 394 Pa. 162, 145 A.2d 857 (1958) (presumption in favor of natural mother buttressed by showing that her new husband could adequately support her children, who had been in a foster home since her divorce); Commonwealth *ex rel.* Harry v. Eastridge, 374 Pa. 172, 97 A.2d 350 (1953) (court may not overlook finding that natural mother was caring for children improperly, in deference to presumption that the best interests of children are served in the custody of their natural parents).

Hence, although the child is considered a ward of the state, judicial standards for state intrusion into the family have traditionally been quite high.[22] State interference will be permitted only if the best interests of the child dictate,[23] if compelling[24] or substantial[25] reasons are evident, or if a clear necessity exists.[26] Even where the decision has been made to remove a child from his home, the disposition is not final;[27] it is based on the circumstances existing at the time of the hearing and is subject to modification if the situation should change.[28]

The legislature has set the standards for state intervention at an equally high level. A child may not be taken from his parents under the Juvenile Act, for example, unless he has been judicially declared delinquent or deprived.[29]

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22. Commonwealth *ex rel.* Children's Aid Soc'y v. Gard, 362 Pa. 85, 92, 66 A.2d 300, 304 (1949) (two-year-old illegitimate girl left with foster parents although state agency sought her custody, since court could find no reason to interfere in the family where the child was well cared for); *In re* Brown's Estate, 166 Pa. 249, 252, 30 A. 1122, 1123 (1895) (minors permitted to remain with great-aunt despite contrary provisions in the will of children's father, rather than upset the settled existence of the children).

23. *In re* Snellgrose, 432 Pa. 158, 164-65, 247 A.2d 596, 599 (1968) (natural mother denied custody of teenage daughter where evidence indicated mother had been and currently was involved in illicit relationships); Commonwealth *ex rel.* Burke v. Birch, 169 Pa. Super. 537, 539, 83 A.2d 426, 427 (1951) (natural father who had several illicit affairs during his three marriages denied custody of his son); Commonwealth *ex rel.* Logsdon v. Logsdon, 156 Pa. Super. 85, 87, 39 A.2d 461, 462 (1944) (best interests of child dictated award of custody to paternal grandparents where father was at war, mother had recently suffered a nervous breakdown and maternal grandfather was an alcoholic); Commonwealth *ex rel.* Cleary v. Weaver, 14 Pa. D. & C.2d 715, 717 (C.P. Clinton Co. 1957), *aff'd mem.*, 188 Pa. Super. 197, 146 A.2d 374, 376 (1958) (natural mother forbidden custody of daughter where mother had seen child only four times in six years and child did not know mother's present husband).

24. Commonwealth *ex rel.* Harry v. Eastridge, 374 Pa. 172, 175, 97 A.2d 350, 351 (1953).

25. Commonwealth *ex rel.* Parker v. Blatt, 165 Pa. 213, 215, 30 A. 674 (1895); Commonwealth *ex rel.* Lees v. Lees, 196 Pa. Super. 32, 36, 173 A.2d 691, 693 (1961) (maternal uncle failed to show substantial reasons for retaining custody of child where the father was shown to be equally capable of providing for the boy's welfare).

26. Stapleton v. Dauphin County Child Care Serv., 228 Pa. Super. 371, 386, 324 A.2d 562, 572 (1974) (foster parents may raise issue of who should have custody of child despite prior agreement to return the child when requested by the child care service); *In re* Rinker, 180 Pa. Super. 143, 148, 117 A.2d 780, 783 (1955) (although mother had been hospitalized twice and kept company with married men, the evidence was insufficient to show the clear necessity for state intervention to protect the children).

27. Commonwealth *ex rel.* Cleary v. Weaver, 14 Pa. D. & C.2d 715, 718 (C.P. Clinton Co. 1957) (should mother's conduct improve, order awarding custody of child to grandparents could be reconsidered).

28. *Id.*

29. PA. STAT. ANN. tit. 11, §§ 50-101(3), -102(3), (4) (Supp. 1975). These standards are necessarily stringent, as the United States Supreme Court has held that the Constitution

Contracts for transfer of custody are not contrary to public policy so long as the transfer is made with the welfare of the child in mind.[30] A parent's right to custody is not a property right in the contract sense; the relationship between parent and child is a status and is not a proper subject of contract.[31] Contractual transfers, therefore, though not void on their face, have been repeatedly held voidable at the discretion of the court if the best interests of the children dictate.[32]

The issue whether the placement agreement in *Lee* infringed the child's best interests was not before the court, since only the class

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protects parental interests from abrogation without due process of law. In Armstrong v. Manzo, 380 U.S. 545 (1965), the lower court's refusal to set aside the adoption of a child by her mother's second husband in an ex parte proceeding was reversed on the ground that the natural father's constitutional interest in his child was violated by the failure to give him notice of the proceeding. The constitutional infirmity was not cured by affording a hearing after the decree, since at that time the father would be required to carry a substantial burden of proof which would have been on those seeking the adoption had he been given the required notice. *See* note 47 *infra*.

30. *See, e.g., In re* Book's Estate, 297 Pa. 543, 147 A. 608 (1929) (contract surrendering custody of child to aunt was not contrary to public policy where parents' disagreements operated to the detriment of the child); Enders v. Enders, 164 Pa. 266, 30 A. 129 (1894) (dictum) (simply selling a child for money would violate public policy).

31. Mallinger v. Mallinger, 197 Pa. Super. 34, 175 A.2d 890 (1961); Commonwealth *ex rel.* Teitelbaum v. Teitelbaum, 160 Pa. Super. 286, 50 A.2d 713 (1947); Commonwealth *ex rel.* Goessler v. Bernstein, 149 Pa. Super. 29, 26 A.2d 213 (1942); *In re* Rosenthal, 103 Pa. Super. 27, 157 A. 342 (1931). These cases involved pre-divorce agreements between parents. The superior court indicated that the marital status of the parents was irrelevant to the validity of agreements between them concerning the custody of their children. For the view that such contracts are illegal unless explicitly authorized by statute see RESTATEMENT OF CONTRACTS § 583 (1932).

32. *E.g.*, Commonwealth *ex rel.* Children's Aid Soc'y v. Gard, 362 Pa. 85, 66 A.2d 300 (1949); Enders v. Enders, 164 Pa. 266, 30 A. 129 (1894); Commonwealth *ex rel.* Bankert v. Children's Servs., 224 Pa. Super. 556, 307 A.2d 411 (1973) (contract between foster parents and child care service requiring return of child when requested by service held not determinative of the question of custody); Commonwealth *ex rel.* Bachman v. Bradley, 171 Pa. Super. 587, 91 A.2d 379 (1952) (pre-divorce agreement between parents set aside where it appeared children would be exposed to undesirable influences in the custody of their father); Commonwealth *ex rel.* Berg v. Catholic Bureau, 167 Pa. Super. 514, 76 A.2d 427 (1950) (a purportedly irrevocable transfer agreement held void where it appeared the interests of the child would be best served by that result).

Pennsylvania courts have also ignored such contracts where it appeared that consent had been given under pressure. *In re* Hildenbrand, 405 Pa. 579, 176 A.2d 900 (1962) (forty-year-old unwed mother subjected to humiliation by her family and forced to move out of state). The consent must be intelligent, voluntary and deliberate. *In re* Susko, 363 Pa. 78, 83, 69 A.2d 132, 135 (1949) (consent of young unwed mother invalidated by excessive coercion by brothers). *But cf. In re* Watson, 450 Pa. 579, 301 A.2d 861 (1973), in which the court used the test announced in the earlier cases but held that an intelligent and capable adolescent of fourteen years and her deaf-mute mother could give adequate consent.

aspects of the claim had been appealed; the agreement was challenged as an infringement of parental interests, not those of the transferred children. The court was asked to determine the validity of the agreement through examination of the County Institution District Law and the regulations of the Department of Public Welfare.

The view of the dissent that regulation 3231 D does not permit transfers of "custody" by voluntary agreement is supportable. Regulation 3231 D clearly distinguishes two types of child transfer situations, one wherein written consent is appropriate and one wherein a court order is necessary.[33] The former situation is represented as "foster care," while the latter is characterized as "custody" for the child's protection. The distinction must rest on the nature of the transfer, and it is suggested that one critical factor is time: transfers for a contemplated period may be made by written consent of the parents, but transfers for an indefinite time which are more permanent in nature may only be made pursuant to court order, regardless of the consent of the parents.[34]

The County Institution District Law does not use the term "custody." Rather, the legislature spoke in terms of providing "substitute care" in "foster family homes" and "child caring institutions."[35] In devising the regulations which would govern its operations, however, the Department of Public Welfare gave meaning to the statutory language. Regulation 3205.3 defines foster family care as "a social service which provides substitute family life for a *planned period of time* for children who have been separated from

33. DPW C & Y reg. 3231 D provides:

> When a child is received for foster care at the request of the parents or with their consent, the placement agreement concerning such care shall be in writing, signed by the child's parents and by a representative of the public child welfare agency. A petition to the juvenile court shall not be required for placement of a child, except when change of custody or guardianship of a child is deemed advisable for his protection.

34. *Cf.* Adoption Act, PA. STAT. ANN. tit. 1, §§ 301-03 (Supp. 1975). Where a complete and permanent termination of all parental rights is to be accomplished by adoption, a hearing and judicial decree are required even if the parents consent.

35. PA. STAT. ANN. tit. 62, § 2305 (1968). The relevant portion of the statute is quoted at note 8 *supra*. The only definition of "custody" found in Pennsylvania case law is in Commonwealth *ex rel.* Hartley v. Hartley, 35 North. 262, 263 n.1 (C.P. Pa. 1958):

> "Custody" of a minor embraces the sum of parental rights with respect to the rearing of the minor, and connotes a keeping or guarding of the child. It includes in its meaning every element of provision for the physical, moral and mental well being of the minor including its immediate personal care and control.

their natural or legal parents."[36] The clear implication is that foster care is temporary. Moreover, a reading of regulation 3231 D itself suggests time is a distinguishing factor. Thus, the regulations appear to equate temporary transfers with "foster care," and more permanent transfers with "change of custody."[37]

The court did not note this distinction when it characterized the agreement used by Child Care as a "*non-final*, consensual transfer of *custody*."[38] Yet a non-final transfer under the regulations would not be a transfer of "custody." The form contract purported to transfer custody[39] when, according to regulation 3231 D, voluntary transfer agreements could be used only when the child was received for foster care.[40] The agreement did not conform to this reading of the regulations.[41]

As shown by the majority opinion, at least one other interpretation of the regulations is possible, one that would permit transfers of custody by voluntary agreement. Under such a reading the consensual nature of the transfer would be the sole factor in determining whether a court order would be necessary. Nevertheless, in evaluating the agreement used in *Lee* under either interpretation, the important consideration is the effect of the contract in application.[42] Since conditions for the return of the child were subject to the approval of Child Care, the Lees' son was not immediately returned when they withdrew their consent. Child Care might assert that the retraction of parental consent was ineffective to either invalidate

36. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, MANUAL FOR SERVICES TO CHILDREN AND YOUTH, TITLE 3200, REGULATIONS PUBLIC CHILD WELFARE AGENCIES reg. 3205.3 (1969) (emphasis supplied).

37. Apparently, the acting members of Child Care operated under a different interpretation. In their brief before the supreme court, the appellees distinguished a "voluntary placement of custody" from "a full and complete termination of parental rights," implying that custody could be temporary. Brief for Appellees at 10, Lee v. Child Care Serv. Del. County Inst. Dist., 337 A.2d 586 (Pa. 1975).

Even court-ordered alterations of custody rights are not fully permanent. Commonwealth *ex rel.* Cleary v. Weaver, 14 Pa. D. & C.2d 715, 718 (C.P. Clinton Co. 1957), *aff'd mem.*, 188 Pa. Super. 197, 146 A.2d 374, 376 (1958). *See* text at notes 27-28 *supra*.

38. 337 A.2d at 589 (emphasis added).

39. The words of the agreement were: "I, WE . . . hereby grant and give custody . . . ." *Id.* at 588 n.2.

40. DPW C & Y reg. 3231 D, the relevant text of which is at note 33 *supra*.

41. The regulations are binding on the county institution districts. PA. STAT. ANN. tit. 62, § 703 (1968).

42. On the dangers of the use of such placement agreements by overzealous caseworkers and undereducated parents see Levine, *Caveat Parens: A Demystification of the Child Protection System*, 35 U. PITT. L. REV. 1, 23-24 (1973) [hereinafter cited as Levine].

the agreement or compel the return of the child because the original consent continued to bind the parents. While this argument might have considerable weight in a commercial setting, it is unpersuasive where the agreement deals with the control of children, which is not a proper subject of contract and must serve the child's best interests.[43] Withdrawal of parental consent should have the effect of invalidating the original transfer agreement, since retention of the child after the withdrawal of consent is equivalent to a non-consensual transfer of custody without a court order.

Retention without consent had the effect of a final judicial decree where none had been issued. Had Child Care returned the child at the request of his parents and then instituted proceedings in juvenile court pursuant to regulation 3220 C, no dispute could have arisen as to the validity of the agreement. Had the supreme court discovered the unauthorized *effect* of the agreement, it would have recognized the duty of Child Care to conform its operations to this requirement of regulation 3220 C. By failing to explore the real implications of the contract as applied, the decision in *Lee* permits continued use of transfer agreements which can operate to allow public welfare agencies to retain children indefinitely against the wishes of their parents without the safeguard of prior judicial determination.[44] This result is without authority under regulations 3220 C,[45] 3231 D[46] and the County Institution District Law.[47]

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43. Such contracts are in a special category, since they are voidable at the discretion of the court where the child's best interests dictate. *See* notes 30-32 and accompanying text *supra*.

44. At least one observer feels the courts accept the views of child care agencies in Juvenile Act cases without question, perhaps with the thought that a caseworker can more competently evaluate the situation. The fear is that courts have become mere rubber stamps for decisions already made by the agencies. Levine, *supra* note 42, at 33. For the suggestion that the articulated standards may be difficult for judges to apply see Tamilia, *Neglect Proceedings and the Conflict Between Law and Social Work*, 9 DUQ. L. REV. 579, 584 (1971).

45. DPW C & Y reg. 3220 C reads:

> Children shall not be removed from their own homes without the written consent of the parents . . . unless the child has been committed to the agency by a court. The legal status of the child shall be ascertained and recorded. When the legal status of the child is in doubt, the agency shall petition the appropriate court for a determination of status.

46. The relevant text of DPW C & Y reg. 3231 D is at note 33 *supra*.

47. The text of PA. STAT. ANN. tit. 62, § 2305 (1968) is at note 8 *supra*.

By denying the need for the statutorily required judicial decree prior to an alteration of custody, the agreement may also have deprived the parents of their constitutionally protected interest in their children without due process of law as in Stanley v. Illinois, 405 U.S. 645 (1972) and Armstrong v. Manzo, 380 U.S. 545 (1965). *See* notes 11 and 29 *supra*. The court

The public policy consequences of the *Lee* decision, as Justice Nix observed in his dissent,[48] could be most serious. *Lee* makes it possible for an organ of the state to retain control over a child without a court order after parental consent to a supposedly temporary agreement has been terminated.[49] The transfer of custody takes on characteristics of a permanent transfer and forces parents to petition for writs of habeas corpus to regain the custody of their children.[50] This result undermines the welfare of the children involved, whose best interests have long been of major concern to the courts and the legislature; parents in need of temporary assistance for the care of their children may hesitate to seek help from child care services because they fear the permanent loss of their sons or daughters. The use and judicial approval of placement agreements like those in *Lee*

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found no denial of due process because consent was originally given and the juvenile court was available to review disputes. 337 A.2d at 590. Even if the original consent constituted waiver of parental rights to notice and hearing, this consent or waiver should be revocable.

The Lees would sue for custody of their son in order to obtain his return. The juvenile court, however, would have no jurisdiction over the custody suit unless Child Care were to assert the child was deprived. It is more likely that Child Care would defend the action on grounds that the original consent was irrevocable, rather than carry the burden of proving deprivation. In that event, juvenile court would be an improper forum for the dispute despite the fact that it is made available to the parties by the terms of the agreement. Generally, juvenile court may affect the custody of children only in cases of delinquency, deprivation or other specialized circumstances not present in this case. Juvenile Act, PA. STAT. ANN. tit. 11, §§ 50-102(8), -103, -303, -329 to -332 (Supp. 1975). *See In re* Tuttle, 356 Pa. 378, 52 A.2d 313 (1947); *In re* Rose, 161 Pa. Super. 204, 54 A.2d 297 (1947). *But cf. In re* Salemno, 169 Pa. Super. 240, 82 A.2d 560 (1951).

As an alternative remedy, the Lees could petition a court of common pleas for a writ of habeas corpus. PA. STAT. ANN. tit. 17, § 251 (1962). The existence of this potential remedy does not negate the possibility of a denial of due process. In *Stanley*, the United States Supreme Court recognized the deprivation occasioned by the delay between the unauthorized taking of the child and the subsequent issuance of a court order remedying the situation. 405 U.S. at 647. Moreover, this remedy may be inadequate due to an impermissible shift of the burden of proof. The parents will be the moving parties in the habeas corpus action and will be required to prove that the interests of their son will be best served by his return to them. Stapleton v. Dauphin County Child Care Serv., 228 Pa. Super. 371, 324 A.2d 562 (1974). In contrast, had Child Care been forced to obtain the required court order, the burden of showing the compelling reasons for state interference with the family unit would have fallen on the agency. DPW C & Y reg. 3220 C. The alternative remedy of habeas corpus, which forces the aggrieved parents to sustain a substantially higher burden of proof, would not serve to repair the damage caused by the original unconstitutional deprivation. Armstrong v. Manzo, 380 U.S. 545 (1965).

48. 337 A.2d at 591.

49. Agreements of the type used in *Lee* are widely employed in Pennsylvania. Levine, *supra* note 42, at 26.

50. *See* note 47 *supra*.

may erode an evinced legislative policy favoring the family unit.[51] Finally, the court's failure to search into the actual effect of these agreements contradicts the well established, well considered judicial policy of carefully guarding the family from unwarranted state intrusions.

David S. Bunnel

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS—SCHOOL SUSPENSIONS— The Supreme Court of the United States has held that a public school student threatened with suspension of ten days or less is, absent danger or emergency, entitled to prior notification and a rudimentary hearing.

Goss v. Lopez, 419 U.S. 565 (1975).

Pursuant to Ohio law,[1] Dwight Lopez and eight other students from various high schools of the Columbus, Ohio public school system were summarily suspended for periods of up to ten days[2] for disciplinary reasons.[3] Prior to their suspensions, the students had been neither granted a hearing nor notified of the charges against them. The students filed a class action suit against the Columbus Board of Education and certain administrators of the school system,[4] seeking a declaration that the Ohio statute authorizing the

51. PA. STAT. ANN. tit. 11, § 50-101(b)(1) (Supp. 1975); PA. STAT. ANN. tit. 62, § 2305 (1968).

1. OHIO REV. CODE ANN. § 3313.66 (Page 1972) provided that authorized school officials could suspend pupils for not more than ten days. The only statutory procedural requirements were notification to the parent or guardian and the clerk of the board of education within twenty-four hours after the suspension.

2. The statute allowed a school authority to expel a student upon notification to the parent or guardian within twenty-four hours. The term of expulsion could not extend beyond the current semester. The pupil, parent or guardian could appeal the expulsion to the board of education; there was no statutory right to appeal a suspension. *Id.*

3. The suspensions occurred during a period of widespread unrest in the Columbus school system. Several of the students had participated in disruptive demonstrations on school premises during regular class hours. One student had physically attacked a police officer and had been suspended immediately. Another was arrested at a demonstration at a high school other than the one in which she was enrolled; she was notified of her suspension on the following day before she went to school. Goss v. Lopez, 419 U.S. 565, 570-71 (1975).

4. Plaintiffs brought the action under provisions of the Civil Rights Act which provide: